

### Battery

<b>Act</b>	Voluntary act that is unconsented to by another party	
<b>Harmful/ offensive touching</b>	<i>Harmful:</i> Causing physical injury <i>Offensive Touching:</i> Offending a person's reasonable sense of personal dignity	<b>Offensive Touching Factors:</b> i. Parties relationship  ii. P's vulnerability/sensitivity  iii. Context  iv. nature of D's Act  v. D's motive

### Battery (cont)

<b>Intent</b>	Purpose or substantial certainty result will occur	<b>Single Intent:</b> 1. Intends to cause a touching of another & 2. The V finds the touching harmful or offensive or the touching would be harmful/offensive to a person of ordinary sensibilities  <b>Dual Intent</b> 1. Intends to cause a touching of another && 2. Intends the touching to be harmful/offensive  *don't forget to ask if V is a person of ordinary sensibilities
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### Trespass to Land

<b>Rule</b>	Intentionally ----enters or causes -----entry on the land -----of another
<b>Intent</b>	Even if mistaken of who the property belonged, the intent to enter is all that matters

### Trespass to Chattles

<b>Rule</b>	Intentional ---intermeddling -----with the property -----of another
<b>Damages?</b>	Plaintiff must suffer loss of use of property Stealing a car v. a 10 minute joyride

### Assault

Intentionally putting another in apprehension of an imminent harmful or offensive touching

#### Overt Act

---->	Apprehension	An awareness of an imminent touching = anticipation
---->	Imminence	Does not have to be instantaneous, but would occur without delay

<b>intent</b>	Purpose or substantial certainty result will occur
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### Assault (cont)

- - If battery occurs, **transferred intent**
- - makes D guilty of battery even if they
- - did not intend the touching to occur but
- - want intended for the apprehension

*Words alone do not make the actor liable for assault **unless** together w/acts or circumstances they put the other in reasonable apprehension*

*Transferred Intent:* Occurs when a Defendant intends to commit one tort and ends up committing another

### [IIED]

#### Extreme & Outrageous Conduct

*Exceeds bounds of tolerable decency*

Factors:

- a. Repetitive/pattern of abuse
- b. chronic
- c. power differences
- d. severity of conduct
- e. vulnerabilities
- f. context
- g. discriminatory language
- h. death [Howard Stern example]

#### Intent/recklessness

*Purpose/substantial certainty is not required*

*recklessness*

Disregard of substantial risk, precondition health

### [IIED] (cont)

#### Severe Emotional Harm

\*When issue spotting, look for person's emotional well-being: i.e. -didn't eat, distraught

#### 3rd Party claiming for IIED

1. Plaintiff must be present
  2. Defendant knows plaintiff was present
  3. Blood relationship
- \*if not family member, then the plaintiff must have suffered bodily harm

### DUAL INTENT V. SINGLE INTENT

#### \*Intent

#### Single Intent 1 & 3

1. Intends only to cause a touching (of another)
  2. V finds the touching harmful or offensive
- // *the touching would be harmful/offensive to a person of ordinary sensibilities*

#### Dual intent 2

1. Intends to cause a touching
2. **intends the touching to be harmful/offensive**

#### Thin Skull Rule

Responsible for injuries and any harm reasonably foreseeable after initial injury

### Conditional Assaults

**A show of force accompanied by an unjustifiable or unlawful command compiles as battery is an assault**

(EX) If it wasn't Tuesday I cut your throat

### Conversion

#### Rule

Intentional  
---exercise of dominion  
-----over property  
-----of another

#### 4 factors

1. Assumes control
2. deprives someone of use
3. refuse to return on demand
4. destroying property

*mistakes do not matter*

-joyrides do not count

-Plaintiff has lost use, dispossession, lost/damages

### False Imprisonment

#### Confinement

- i. Physical restraint
- ii. Duress of goods
- iii. Physical barriers: No reasonable means of escaping
- iv. Improper false assertion of legal authority
- v. Threat of physical force to person, family, or property

#### Awareness

Victim has awareness or suffers injuries if there was no awareness

Example-when a woman with diabetes was accidentally locked in the library and had an attack overnight

#### intent

D acted with purpose or substantial certainty

### DEFENSES 4 intentional torts

#### Recapturing Chattel

1. You can use reasonable force to obtain property, but no room for mistake (hot pursuit) &&
2. TIME AND MANNER

#### Shopkeeper Privilege

1. Reasonable believe,
2. Room for mistake

### DEFENSES OF PROPERTY

1. Reasonable force to defend property [no deadly force plz]

You cant do by mechanical device what you can't do by person, i.e.-spring gun

#### Brown v. Martinez

Transferred intent from assault to battery (don't matter if touching occurred, intended to apprehend, therefore harmful touching, a normal person would find offensive/harmful

#### In Loco Parentis

Parents can/are privilege to discipline their children  
-->(and anyone else who stands in the place of parents, such as bus drivers, teachers, etc)

Cannot maintain privilege if using deadly force just because of a posted warning sign

**Defense rule: Privilege to use reasonable force to protect yourself from imminent danger**

----->defense of others?

A: Split jurisdiction on mistake

### Children & Mentally Impaired

#### Children

Bright line rule: not really one, but normally any child below the age of seven or six, depends on state statutes that declare when a child is able to or not able to form the intent to be guilty of a tort

#### *Garrett v. Daley:*

Dailey's intent to cause a harmful bodily contact is inferred from his knowledge that the contact would occur

#### Mentally Impaired

State by state, depends on whether the person ins able to form the intent or not

#### *Wagner v. State:*

State immune from battery cases, and so long as patient had intent to touch, that was enough to satisfy a battery, doesn't matter if he intended the touching to be malicious or not

### NEG: DAMAGES \$\$\$\$\$\$

#### 1. Actual Harm

Physical injury and/or property damage

#### When more than 1 possible defendant? **Joint & Several Liability**

Two test:

1. Multiple defendants acted in concerted (express or implied) engagement in a certain conduct  
-->i.e., Dragracing
2. When multiple defendants negligence combined in an indivisible injury  
-->One that cannot be reasonably apportioned with reasonable certainty

### NEG: DAMAGES \$\$\$\$\$\$ (cont)

#### Triggering JSL: Anyone defendant can be liable for the indivisible harm

->Under pure joint several liability Jdx, plaintiff can get 100% damages from D1, even if D1 is only 25% at fault, but is more reasonable for P to obtain damages from D1 if it is unlikely D2 will be able to pay the 75% [or whatever it may be]. And then D1 can seek **contribution** of 75% from D2 on their own.

->In a pure several liability jdx, P is strictly limited to receiving 25% of damages from D1 and 75% from D2

->**Pure joint jdx**, P is able to receive 100% from D1 if D2 has indemnity

#### 3. Contribution and Indemnity

### NEGLIGENCE

#### D/B/AC/PC/\$\$\$

#### Negligence Per Se

#### Negligence Per Que?

This means that violation of the statute, even though that statute itself does not say it, actually determines the actor's duty and breach

#### 1. Safety Statute?

#### 2. Class of Person?

#### 3. Excuse?

### NEG: DUTY

#### (1) Is there a duty owed?

**Trespasser:** On land w/o permission; no privilege

#### Duty not to intentionally or recklessly injure any T

*Discovered T:*

1. Duty to warn if know of danger and that T about to encounter

*Undiscovered Exceptions:*

1. Duty to reasonable warn only if Landowner knows or has reason to know of danger and that P might encounter (Reasonable care for activities) **OR**
2. Duty of reasonable care if T deviates in minor way from public highway or mislead into thinking it's public highway

No duty to inspect/discover Trespasser

**Child Trespasser:** On land w/o permission; no privilege

#### Duty to warn/make safe reasonably where:

1. Trespass by kis is foreseeable
2. L knows or has reason to know of daner from artifical condition
3. Kids too young to appreciate dangers and avoid them

**Licensee:** Permitted to enter land; entry for P's benefit

#### Duty to reasonably warn *only if L knows or has reason to know of danger and that P might encounter*

No duty to inspect/make safe

EXAMPLES: *Social guest, T's privileged because of necessity, etc..*

### NEG: DUTY (cont)

**Invitee:** Business visitor or public invitee on land for benefit to L or mutual benefit or because open to public

#### Duty of reasonable care *including duty to inspect and make safe non obvious dangerous conditions and obvious conditions if injury foreseeable despite P's knowledge or if P must confront danger regardless of warning*

Examples: *Customers, building inspectors...*

Trad'tl approach

Open & obvious doctrine: P barred from suing landowner for open and obvious dangerous situations

Modern: certain situations where duty to foresee

examples-> *grocier, ambulance paramedic, sometimes no choice but to confront obvious danger*

### Professional Rescuers

Usually same as *licensee*: L not liable for negligence creating fire, risks inherent in rescue or ordinary negligence that creates occasion for presence of rescuer at place where she's injured. Extended to prof. rescuers outside land. may be liable for independent acts or risks beyond scope of duties

Examples: *Fire fighters & cops & safety officers--Status determined by nature of work*

### NEG: DUTY (cont)

#### Special Duties

**FFR:** T as necessity privilege= firefighters?

#### Doctors

->duty defined by *expert testimony*

Traditional approach-**pure locality**

-->expert testimoney can only come from a local practitioner w/in same field and area

#### modified locality:

-->A physician of the same degree of care, skill and proficiency from a similiar community

#### Majority rule:

-->National standard of care of other specialist in the field{{n}}

**Informed Consent** 50/50 A doctor's failure to disclose adequate information

*Materiality standard*

-->Doctor has a duty to disclose all significant information that would be material to patients decision of operation

*Alternative Approach-Medical Standard of Disclosure*

-->Looks to what other medical professions would disclose vis a vi locality rules in jdx

*What should be disclosed?*

1. Nature and probability of risks
2. benefits
- 3.irreversability
- 4.Unpredictability
- 5.alternatives
- 7.Risks of refusing

-->a.Causation for IC: ((1))Risk materialized ((2)) P must show had she known, she would have refused ((3)) A reasonable prudent person would have refused

#### (2)What is the standard of care?



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### NEG: DUTY (cont)

->Default?

---->Reasonable prudent person under the circumstances

->Child?

---->Reasonable child of similiar age, intelligence, experience, andmental ability UNLESS acting in adult activity

### NEG: BREACH

#### Hand forumula

Specific Conduct v. Alternative Conduct, evaluate whether conduct was then reasonable via foreseeability

#### B<PL

**B:** Burden of precautions to eliminate or reduce the risk of harm

->information

->cost/benefit

->giving up social activities

**P:** The foreseeable severity of any harm that may ensue

**L:** Likelihood that the person's conduct will result in harm

\*HF is most useful with conduct that is a deliberate choice

#### Common Understanding

An actor is negligent only if his conduct created a foreseeable risk and the actor recognized or a resonable person would have recognized that risk? OR is it just as simple as don't run a red light?

#### Private practice

Manuals are persuasive->Walmart v. Wright;

->however reasonable care is an objective standard, not a private practice standard (w/ the exception with Doctors and other specialist)

### NEG: BREACH (cont)

#### Custom

R: A person's departure/compliance from/with cutom of the community or of others in like circumstances can either help or hurt defendant

->Existence of a safety custom might prove that harm was foreseeable

->Manuals and standard of care **does not** equal law

->Saftey manuel reflects a higher standard of care *sometimes*

->Complying with statutes are the bare minimum, reasonable care may require higher standard of care, i.e.-TJ HOOPER

#### Notice of Oppurtunity

*Circumstantial Evidence:*

Defendant created dangerous condition **OR**

Defendant *knew* of condition and failed to remedy

#### Res Ipsa

R: Under certain circumstances, the very fact that an accident occurred leads to an inference that the accident was caused by negligence

#### Requires:

1. Does not ordinary occur without negligence
2. Other causes are sufficiently eliminated  
-->Trad'tl: Control Rule-Plaintiff had to show that defendant had exclusive control of instrumentality that caused the harm  
-->Modern: Restatement version-Considers Power of Control, Managing Control, Physical Control
3. Within the scope of defendant's duty--Up to the jury

Rule to start breach: "The defendant who breaches the duty of care is negligent"

### NEG: ACTUAL CAUSE

#### But For

But for the defendant's negligent conduct, plaintiff would not have been injured [or as injured]

#### Substantial Factor

D1 and D2 acted in concert, and but for conduct is proved on both D1 & D2= substantial contributing factor in P's injuries, and JSL can be applied so that P may recover fully (apportioned between Ds)

#### Lost Chance

But for D's negligence, "destroyed a substantial possibility" of achieving a more favorable outcome

#### Alternative Liability

When only one defendant caused the harm, but cannot determine who

-> Triggered by indivisible injuries

### NEG: PROXIMATE CAUSE, Scope of Liability

#### Risk Rule

The type of harm that occurs within the risk of defendant's negligence (foreseeable harm)

J.Cardozo: Narrow Approach-D is responsible for injuries that can be foreseen

J.Andrews: D is responsible for any direct injuries

1. Foreseeable Plaintiff?

2. Foreseeable harm?

->Type/manner of harm does not have to be foreseeable and *extent* of harm

### NEG: PROXIMATE CAUSE, Scope of Liability (cont)

#### Rescue Doctrine

->Generally a rescuer can recover from the defendant whose negligence prompts the rescue if the rescuer had a reasonable belief that the victim was in peril

#### Intervening Causes

An intervening act is one which operates after the defendant's original negligence to bring about the harm

Must prove intervenor is superceding to relieve Defendant of liability, otherwise intervenor is dependant and is within the risk of D1's negligent conduct

#### Trad'tl Approach:

- >criminal intervenor = superceding
- >Acts of God and unforeseeable
- >Risk terminated
- >Suicide unless exception

#### Modern approach:

- >Criminal acts are not superceding if defendant exposed plaintiff
- >Suicide-->If your job is to prevent others from hurting themselves
- >D's conduct put/left P in a position of Danger (*i.e.* -*Derdiarian & wooden horse*), cannot argue injuries from intervenor is superceding
- >dependent intervenors that are forced to operate in response to defendant's negligence
- >Rescue Doctrine

### P/C Rule: A defendant is the proximate cause if the type of harm that resulted was foreseeable and within the risk of the defendant's negligence

Defendant is liable only for

1. Types of injuries foreseeably risked by D's negligence
2. To classes of persons foreseeable in the scope of risk of D's negligence

### AFFIRMATIVE DEFENSES TO NEG

#### 1. Contributory Negligence

*Plaintiff's failure to exercise care for own safety (mirrors pfc of NEG)*

Changes damages

Traditional/Minority Rule: **Pure**

#### Comparative Fault

->Plaintiff's recovery is reduced entirely if Plaintiff is found to be contributorily negligent even by a small percentage

#### Modified Approach

- a. 50 and less? able to recover minus portion of plaintiff's portion of comparative fault
- b. A plaintiff that shares more than 50% of fault recovers nothing

### AFFIRMATIVE DEFENSES TO NEG (cont)

#### 2. Assumption of Risk

##### Consent: Express AOR

Does the waiver encompass negligence and is the harm within the scope or outside the scope of D's duty  
Typically found within exculpatory clauses  
->Look at **Tunkle Factors** to ensure exculpatory clauses is enforceable{nl}1. Valid as a matter of policy?

---> *Nature of services*

---> *Bargaining power*

---> *Plaintiff subject to D's carelessness?*

2. Fairly entered into
3. Clear and unambiguous

##### Implied Assumption of Risk

*Primary v. Secondary*

##### -> Primary AOR

Plaintiff fails to show PFC, inherent risk of sports, spectating, etc

##### -> Secondary AOR

Must know and appreciate the risk voluntarily  
->subjective standard

Majority rule w/ SAOR, use contributory negligence

If plaintiff is CN, then do NEG Analysis on P

#### Avoidable consequences:

plaintiff may have not reduced risk afterwards or failed to perform duty to mitigate damages, then D is not liable.

#### Casual Apportionment

Plaintiff is responsible for his own injuries aside from injuries sustained by defendant

#### Where does Bexiga Principals go?

1. Defendant knows of possible carelessness
2. Plaintiff's conduct only risk to himself